

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JOSHUA BROWN, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KELLY SUE HENSLEY,

Respondent-Appellant.

UNPUBLISHED

March 8, 2007

No. 272512

Jackson Circuit Court

Family Division

LC No. 03-006511-NA

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g) and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err by finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The primary conditions of adjudication were respondent's drug addiction and domestic violence. During the more than two years since the initial dispositional hearing, respondent failed to complete substance abuse treatment despite at least two referrals. She had a number of positive drug screens and lengthy periods of time during which she failed to provide required screens. She admitted relapsing into drug use in May 2006. At the July 2006 termination trial, respondent testified that she had been sober for a couple of weeks, but was not attending any substance abuse program. Clearly, respondent's drug addiction was not successfully addressed during these proceedings. Moreover, given her failure to complete a drug rehabilitation program during the lengthy pendency of this matter, and her lack of any support system or plan for staying sober, it is more than reasonable to conclude that respondent's drug addiction will not be rectified within a reasonable time considering the age of the child. MCL 712A.19b(3)(c)(i). There was also substantial evidence that respondent did not resolve her problem with domestic violence and was not likely to do so within a reasonable time given that she was referred for counseling concerning domestic violence, but attended only sporadically and did not successfully complete counseling.

Respondent failed to provide proper care and custody for the minor child by using methamphetamines and frequently engaging in domestic violence in his presence. MCL

712A.19b(3)(g). The evidence discussed above equally demonstrates that there is no reasonable likelihood that respondent will be able to provide proper care and custody for the minor child within a reasonable time considering his age. *Id.* The evidence at the July 2006 trial further indicated that respondent lacked suitable housing and employment, and lacked prospects for either. This evidence amply supports the trial court's finding that respondent will not be able to provide proper care and custody for the minor child within a reasonable time considering his age, and the trial court did not clearly err by so finding.

Given clear evidence that respondent failed to address her drug addiction and issues of domestic violence, and lacked housing and employment at the time of the termination trial, it is more than reasonable to conclude that the child would be subject to instability and neglect if placed in respondent's care. This would certainly result in harm to the child, who is in need of permanence and stability. Therefore, the trial court did not clearly err by finding that the child would be harmed if returned to the care of respondent. MCL 712A.19b(3)(j).

Finally, the trial court did not err by finding that termination was not clearly contrary to the best interests of the child. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). At the time of termination, the child, now age eight, had been in an out-of-home placement for approximately 2-½ years. Although there is a bond between respondent and Joshua, the evidence overwhelmingly indicated that she lacks the ability to care for him and is unlikely to be able to do so in the reasonably foreseeable future. We are not persuaded by the argument that because respondent's parental rights to an older child were not terminated, her rights to Joshua should not be terminated. Respondent's older child, Joseph, is nearly 17, a circumstance that makes his case very different from that of Joshua's. Joseph was under the care and guardianship of his maternal grandparents at the beginning of this matter, but was returned to respondent's care for a period of time during these proceedings. Following a petition for removal and a plea of no contest by respondent, he was placed in the care of his paternal grandparents. While the post-termination record indicates that Joseph might be returned to the care of respondent, it also indicates that respondent continues to fail to engage in rehabilitative services. Under these circumstances, we are unable to conclude that the trial court's best interests determination concerning Joshua was clearly erroneous.

Affirmed.

/s/ Deborah A. Servitto
/s/ Michael J. Talbot
/s/ Bill Schuette